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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEITH L. KELLEY, CHARLES L. HUDSON, and JOHN M. HEMPHILL

Appeal 2015-002396
Application 13/146,934
Technology Center 2400

Before ELENI MANTIS MERCADER, LINZY T. McCARTNEY, and CARL L. SILVERMAN, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

STATEMENT OF THE CASE

The present application concerns a connection mechanism that dynamically changes an electronic device's network port connections based on the operating mode of the electronic device. Spec. ¶ 5. Claim 1 illustrates the claimed subject matter:

> 1. A connection apparatus, comprising:
>
> a hardware processor;
>
> at least one module to connect network ports of one or more electronic devices to network ports that are connected to respective networks; and
>
> a manager, executable by the hardware processor, to create at least one profile for a particular one of the one or more electronic devices, wherein the at least one profile specifies that the particular electronic device is to be connected to different subsets of the networks for corresponding different modes of operation of the particular electronic device.

REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as obvious over various combinations of Jiang et al. (US 2010/0161741 A1; June 24, 2010), Yu et al. (US 2006/0215576 Al; Sept. 28, 2006), Kinoshita (US 2010/0306419 A1; Dec. 2, 2010), and Kudo (US 2009/0144393 A1; June 4, 2009).

ANALYSIS

Claim 1

Appellants contend Jiang fails to disclose "different modes of operation of the particular electronic device" as recited in claim 1. App. Br. 7. Appellants assert the Examiner found Jiang's "normal" and "attack" operation modes teach the recited "different modes of operation" and Jiang's

server teaches the recited "particular electronic device." *Id.* Appellants contend Jiang's normal and attack operation modes concern Jiang's *firewall*, not Jiang's server. *Id.* Therefore, according to Appellants, these operation modes are not "different modes of operation of" the item the Examiner mapped to the recited "particular electronic device"—Jiang's server. *Id.* Appellants also contend Jiang's "server capabilities" are not "different modes of operation" for Jiang's server because the capabilities are associated with server *applications* and are simply handshake values that a server application may set for a communication with a client. Reply Br. 4.

We find Appellants' arguments unpersuasive. As acknowledged by Appellants, the Examiner found Jiang's server capabilities and server respectively teach the recited "different modes of operation" and "particular electronic device." *See* Ans. 17. Although Jiang discloses that a server capability concerns a "capability of a server application" operating on the server, Jiang ¶ 44, Jiang indicates that setting the capability changes certain aspects of how a server communicates with a client. For example, Jiang discloses "a capability may refer to a value that may be set in a three-way handshake" such as TCP message values like MSS (Maximum Segment Size), window scale, window size, and selective acknowledgment values. *Id.* As one of ordinary skill in the art would have recognized, setting the selective acknowledgment value alters the way communicating entities (e.g., a client and a server) handle the acknowledgement process. Accordingly, Appellants have not persuaded us the Examiner erroneously found Jiang's

server capabilities and server teach "different modes of operation of the particular electronic device."[1]

Appellants also argue the Examiner's rejection lacks sufficient clarity because, in Appellants' view, the Examiner made inconsistent statements regarding Jiang's teachings. App. Br. 7–8. In particular, Appellants contend the Examiner found Jiang both teaches and fails to teach "different subsets of the networks for corresponding different modes of operation" as recited in claim 1. *See id.*

We find Appellants' arguments unpersuasive. As the Examiner explained in the Answer, the Examiner found Jiang did not "clearly express[]" this limitation but Yu rectifies this deficiency. *See* Ans. 18; *see also* Final Act. 6 (explaining that Jiang "indicat[es]" different subsets of networks corresponding to different modes of operation but finding Jiang does not disclose this subject matter). We therefore disagree with Appellants that the Examiner's rejection lacks sufficient clarity on this point.

Appellants next argue that neither Jiang nor Yu teaches or suggests the "at least one profile" recited in claim 1. Appellants argue Jiang does not teach or suggest that Jiang's server profile database specifies that a server "is to be connected to different subsets of the networks for corresponding

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[1] The Examiner also found Jiang's clients are "particular electronic devices" within the meaning of the claims. *See* Ans. 17. Jiang teaches different modes of operation for each client. For example, Jiang teaches that clients can generate messages that conform to a client's capabilities, as well as messages that do not, depending on the circumstances. *See, e.g.*, Jiang ¶¶ 54, 58, 70. Thus, Jiang's clients are "particular electronic devices" that have "different modes of operation": a mode in which clients generate messages that conform to server capabilities and a mode in which clients generate non-conforming messages.

different modes of operation of the particular electronic device" as required by claim 1. *See* App. Br. 8–9. Appellants contend the Examiner improperly relied on official notice to address this gap. *See* Reply Br. 7–8. With respect to Yu, Appellants assert the Examiner confused the terms "subset" and "subnet," leading the Examiner to erroneously find Yu suggests this limitation. App. Br. 10. Appellants argue that even if we were to ignore the distinction between these terms, Yu says nothing about a profile and does not teach or suggest the disclosed ad-hoc and infrastructure nodes are on two different subnets. *Id.* at 10–11. Finally, Appellants contend the Examiner's assertions that Yu's subnets are interconnected and that an ordinary artisan would recognize that each ad-hoc network is on a separate network lack adequate support in Yu. *See* Reply Br. 9–10.

We find Appellants' arguments unpersuasive. As an initial matter, the Examiner did not find that Jiang or Yu alone teaches or suggests the "at least one profile" recited in claim 1. The Examiner found Jiang teaches the recited "at least one profile," except for the "different subsets of the networks for corresponding different modes of operation" aspect of the profile. *See* App. Br. 6; Reply Br. 18. However, the Examiner found Yu fills this gap. *See* App. Br. 6; Ans. 18–19. The Examiner concluded Jiang's and Yu's *combined* teachings would have rendered obvious the recited "at least one profile." *See* App. Br. 6–7; Ans. 18–19. Appellants' arguments that Jiang or Yu individually fails to teach or suggest this limitation do not adequately address the Examiner's rejection. "[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

In any event, Appellants' arguments against the references individually are also unavailing. With respect to Jiang, as noted above, the Examiner found Yu teaches "different subsets of the networks for corresponding different modes of operation," not Jiang. *See* App. Br. 6–7; Ans. 18–19. Therefore, Appellants' argument that Jiang does not teach a server "is to be connected to different subsets of the networks for corresponding different modes of operation of the particular electronic device" does not persuasively address the Examiner's rejection.

As for Yu, Appellants' argument that Yu does not teach profiles is unpersuasive because the Examiner found Jian teaches profiles. *See* Final Act. 6–7; Ans. 18–19. Regarding Appellants' remaining arguments concerning Yu, as found by the Examiner, Yu discloses switching electronic devices between ad-hoc and infrastructure communication modes. *See, e.g.*, Ans. 18–19; Yu ¶ 1. In the ad-hoc mode, the electronic devices communicate with each other in a peer-to-peer fashion; in the infrastructure mode, the devices communicate with each other using an access point. *See* Yu ¶ 2; Figs. 1 (depicting a network communicating in an infrastructure mode), 3 (depicting a network communicating in ad-hoc mode). Put differently, Yu discloses connecting electronic devices to different subsets of networks (either a peer-to-peer network subset or a network subset that includes an access point) for different corresponding operation modes (ad-hoc or infrastructure mode). Thus, even assuming Appellants' arguments concerning Yu's "subnets" and ad-hoc networks are correct, Yu supports the Examiner's finding that Yu teaches "different subsets of the networks for corresponding different modes of operation."

Finally, Appellants contend the Examiner failed to provide sufficient rationale for the Examiner's combination of Jiang and Yu. In particular, Appellants contend the Examiner's "rationale is merely a conclusory statement of asserted benefits, and fails to provide any discussion or reasoning as to how the substantially different techniques of Jian and Yu could even be combined, much less result in the asserted benefits." App. Br. 12.

We find Appellants' arguments unpersuasive. The Examiner found that it would have been obvious to combine Jiang's and Yu's teachings in the claimed manner because doing so would "effectively balance system resources, improve QoS, reduce the communication traffic, waiting time and the cost of the client and increase the income of the provider of the network service." Final Act. 7. This rationale comes directly from the cited art. *See, e.g.*, Yu Abstract. Although Appellants assert that Jiang's and Yu's inventions are "substantially different," Appellants have not provided persuasive evidence or reasoning to support this contention. *See* App. Br. 12. And Appellants have not shown the proposed modification would have been "uniquely challenging or difficult for one of ordinary skill in the art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Accordingly, Appellants' inadequately supported arguments on this issue have not persuaded us that the Examiner erred.

For the above reasons, we sustain the Examiner's rejection of claim 1. Because Appellants have not presented separate, persuasive arguments for claims 2–16 and 18–20, we also sustain the Examiner's rejections of these claims.

Claim 17

Claim 17 recites "the article of claim 15, wherein the at least one profile is associated with a particular bay of an enclosure for the electronic device." Appellants argue the cited portions of Kudo say nothing about a profile associated with a particular bay on an enclosure. App. Br. 16. According to Appellants, the cited portions, at best, simply show a bay of an enclosure. *Id.* Appellants also contend the Examiner failed to articulate a reason to combine the teachings of Jiang and Kudo to arrive at the claimed invention. Reply Br. 11–12.

We find Appellants' arguments persuasive. The Examiner concluded one of skill in the art would have combined the teachings of the cited art because "Jiang teaches profiles and Yu teaches subnets of network with plurality of modes, Kudo also in the field of endeavor would make it obvious to arrive at the present invention." Ans. 25. Simply finding that certain elements recited in the claims were known in the prior art and that the references are in the same field of endeavor does not provide sufficient reason to combine the prior art's teachings in the claimed manner. Based on this record, we agree with Appellants that the Examiner has failed to articulate a reason to combine the cited art teachings in the claimed manner and therefore do not sustain the Examiner's rejection of claim 17.

DECISION

We affirm the Examiner's rejections of claims 1–16 and 18–20. We reverse the Examiner's rejection of claim 17. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART